

April 30, 2007

Howard I. Nelson 1004 Eckert Street N.W. Alexandria, MN 56308	Stephen F. Rufer Pemberton, Sorlie, Rufer & Kershner, PLLP 110 North Mill Street P. O. Box 866 Fergus Falls, MN 56538-0866
---	--

**Re: *In the Matter of Nelson v. Moe Township*
OAH Docket No. 12-3100-17980-2**

Dear Mr. Nelson and Mr. Rufer:

I am the Administrative Law Judge assigned to hear this matter in Alexandria on June 7, 2007.

Along with the Notice of Appearance that Mr. Nelson filed with me last week, he enclosed a letter that he sent to the Commissioner of Veterans Affairs. In it, he states that on April 10, 2007, he resigned from his job doing grading and snow plowing for Moe Township. He asked if that changes his ability to seek relief under the Veterans Preference Act. Without having all the information available yet, it appears that the resignation would not affect Mr. Nelson's right to seek relief under the Veterans Preference Act, but it may limit the amount of back pay that could be awarded if it is found that the Township violated Mr. Nelson's rights as a veteran. Assuming that Mr. Nelson was regularly employed by the Township and it was a job that continued from year to year and was not temporary, and unless the Township has some other defense to this matter, it would violate the law to remove Mr. Nelson from his position without giving him a notice of his right to a hearing under Minn. Stat. § 197.46. In similar cases, Administrative Law Judges normally recommended, and the Commissioner of Veterans Affairs normally orders, that the veteran be reinstated to his or her former job, be paid all back pay for work that was missed, and continue to be paid until the political subdivision properly removes the veteran.

In this case, according to the Petition for Relief, Mr. Nelson claims he was illegally replaced on the job in January of this year and not allowed to work thereafter. I will need to know more about the nature of the resignation, but if it was knowing and informed, it is possible that Mr. Nelson should be paid for the work he missed this spring, but not reinstated to his former position. This would all depend on the type of facts presented at the hearing.

I would say that the amount of money at issue in this matter is relatively small, particularly compared to the costs the Township and its insurer will incur for legal fees and hearing costs. I would also note that the rights provided to veterans under the Veterans Preference Act have been vigorously enforced by the Department of Veterans Affairs and the appellate courts of this state. Therefore, I would recommend that you two talk with each other about resolving this matter prior to the hearing. Such settlements are normally in everyone's best interest.

For your information, I have enclosed two information sheets. The first is entitled "Contested Case Hearing Preparation" and the second is "We Need the Facts!!, How to Be a Good Witness." They should help in preparing for the hearing. If either of you have any questions or think it would be helpful to have a conference prior to the hearing, please call me, and I will set up a telephone conference for us.

Finally, I am sending Mr. Rufer a copy of Mr. Nelson's Notice of Appearance and attached letter. Be sure to send the other person copies of anything that you might send me in the future.

Sincerely,

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Telephone: 612-349-2544
steve.mihalchick@state.mn.us

SMM:mo
Encls.

cc: Clint Bucher